

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Determination of Maltreatment, Disqualification, and Order Revoking the Child Foster Care License of Pen Standifer	ORDER ON MOTION FOR SUMMARY DISPOSITION
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This matter came before Administrative Law Judge Kathleen D. Sheehy on the Motion for Summary Disposition filed by Hennepin County on October 27, 2010. The OAH motion record closed on November 10, 2010, the deadline for the Respondent to file a written submission in opposition to the motion.

Michael Q. Lynch, Assistant County Attorney, appeared on behalf of Hennepin County Human Services & Public Health Department (County) and the Minnesota Department of Human Services (Department). Pen Standifer (Respondent) did not appear in person or through counsel.¹

Based upon all the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDED ORDER

IT IS HEREBY RECOMMENDED THAT:

The County's Motion for Summary Disposition be GRANTED and that the Commissioner of Human Services AFFIRM the determination of maltreatment; AFFIRM the decision to disqualify the Respondent from any position allowing direct contact with persons receiving services from a licensed program; and AFFIRM the revocation of the Respondent's child foster care license.

Dated: November 29, 2010.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

¹ Respondent's counsel of record filed a Notice of Withdrawal on September 13, 2010.

MEMORANDUM

I. Factual Background

Respondent was a licensed child foster care provider in Hennepin County. On December 30, 2008, A.F., a child living in Respondent's foster care home, ran from the foster home to a nearby gas station, contacted the police, and reported that Respondent had sexually molested him.² Following this report and the ensuing investigation, Respondent was charged on February 2, 2009, with sexually abusing A.F. and two other former foster children.³

On February 6, 2009, the Commissioner of Human Services issued a Temporary Immediate Suspension of Respondent's license. The Respondent appealed that Order, which was affirmed by the Commissioner on April 13, 2009, after a contested case proceeding.⁴

In a letter dated March 6, 2009, the County notified Respondent of its determination that Respondent had committed maltreatment based on sexual abuse and neglect and that the maltreatment was serious and recurring. In the same letter, the County disqualified Respondent from direct contact with or access to persons served by his child foster care program.⁵ Respondent requested reconsideration of the County's maltreatment and disqualification determinations and the County denied those requests.⁶ Respondent then appealed the maltreatment and disqualification determinations.⁷

In an Order dated June 11, 2009, the Department ordered the revocation of Respondent's child foster care license.⁸ Respondent appealed the Order of Revocation on June 19, 2009.⁹ The Respondent's appeals of the maltreatment and disqualification determinations were consolidated with his appeal of the revocation. The Notice and Order for Prehearing Conference and Hearing was filed with the Office of Administrative Hearings on July 17, 2009. At the Respondent's request, the hearing in this matter was continued pending the Respondent's criminal trial on the charges described above.

² Hennepin County's Memorandum in Summary of Motion for Summary Disposition (County Memorandum), Ex. A, page 1.

³ *Id.*, p. 3.

⁴ See *In the Matter of the Temporary Immediate Suspension of the Child Foster Care License of Pen Standifer*, OAH Docket No. 3-1800-20076-2 (Mar. 19, 2009).

⁵ County Memorandum, Ex. E, page 1.

⁶ *Id.*, Exs. F and G.

⁷ *Id.*, Ex. H.

⁸ *Id.*, Exs. I and J. The revocation was also based on allegations that Respondent smoked marijuana with, and in the presence of, children in his care. These allegations were not part of the criminal case against Respondent, and the County does not rely on them for the purpose of the pending motion, arguing that the criminal sexual conduct conviction is sufficient to support the maltreatment, disqualification and revocation decisions.

⁹ *Id.*, Ex. K.

On January 19, 2010, a jury convicted the Respondent of first-degree criminal sexual conduct with regard to A.F.¹⁰ The Respondent has appealed the conviction. He also awaits trial on the other two counts involving other foster children.¹¹

II. Motion for Summary Disposition

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.¹² The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.¹³ A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.¹⁴

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case.¹⁵ The nonmoving party must establish the existence of a genuine issue of material fact by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05.¹⁶ The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.¹⁷

When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.¹⁸ All doubts and factual inferences must be resolved against the moving party.¹⁹ If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.²⁰

III. Analysis

In this case, there are two separate grounds for concluding the Respondent is disqualified: the maltreatment determination, and the conviction itself. Both are disqualifying factors that preclude the Respondent from licensure.

¹⁰ *Id.*, Exs. B & C. The Respondent was sentenced to commitment by the Commissioner of Corrections for 144 months.

¹¹ *Id.*, Ex. D, pages 8-9.

¹² *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); Minn. R. 1400.5500K; Minn. R. Civ. P. 56.03.

¹³ See Minn. R. 1400.6600.

¹⁴ *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

¹⁵ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid-America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

¹⁶ *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (Minn. 1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 75 (Minn. App. 1988).

¹⁷ *Carlisle*, 437 N.W.2d at 715 (citing, *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

¹⁸ *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

¹⁹ See, e.g., *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Thompson v. Campbell*, 845 F. Supp. 665, 672 (D. Minn. 1994).

²⁰ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

With regard to the maltreatment determination, the County must prove by a preponderance of the evidence that the Respondent committed maltreatment.²¹ Maltreatment is defined, in relevant part, as “. . . the subjection of a child by a person responsible for the child’s care . . . or by a person in a position of authority . . . to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree) . . .”²² Serious maltreatment, defined in relevant part in the Background Studies Act as sexual abuse, is a disqualification from licensure.²³

Collateral estoppel precludes identical parties or those in privity with them from relitigating identical issues in a subsequent, distinct proceeding.²⁴ Collateral estoppel may be applied when:

(1) the issue was identical to one raised in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issues.²⁵

The underlying factual question at issue with regard to the maltreatment determination—whether Respondent sexually abused A.F.—is identical to the question addressed in his criminal trial. The jury verdict in the criminal trial constitutes a final judgment on the merits. Respondent, the estopped party, was the defendant in the criminal trial. His criminal trial provided him with a full and fair opportunity to be heard on the issue of whether he sexually abused A.F. Respondent was represented at trial by experienced counsel, and he was found guilty beyond a reasonable doubt by a jury. Respondent is prevented, by application of the principle of collateral estoppel, from challenging or relitigating any of the facts underlying his criminal conviction. There are no genuine issues of material fact that would preclude summary disposition on behalf of the County. The maltreatment determination must be affirmed, and the Respondent is disqualified from licensure because the maltreatment is “serious” as that term is defined in the Background Studies Act.

Second, the criminal conviction itself is a permanent disqualification from licensure. The Background Studies Act requires the Commissioner of Human Services to “disqualify an individual who is the subject of a background study . . . upon receipt of information showing . . . any of the following: (1) a conviction of or admission to one or more crimes listed in section 245C.15”

Section 245C.15, subd.1(a), defining “permanent disqualification,” provides:

An individual is disqualified under section 245C.14 if: (1) regardless of how much time has passed since the discharge of the sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless of

²¹ Minn. Stat. § 626.556, subd. 10e(e) (2008). All references to Minnesota Statutes are to the 2008 edition.

²² Minn. Stat. § 626.556, subd. 2(d).

²³ Minn. Stat. §§ 245C.02, subd. 18(a); 245C.15, subd. 4(b)(2).

²⁴ *Northwestern Nat’l Life Ins. Co. v. County of Hennepin*, 572 N.W.2d 51 (Minn. 1998).

²⁵ *State v. Lemmer*, 736 N.W.2d 650, 659 (Minn. 2007) (quoting *Willems v. Comm’r of Pub. Safety*, 333 N.W.2d 619, 621 (Minn. 1983)).

the level of the offense, the individual has committed any of the following offenses: sections . . . 609.342 (criminal sexual conduct in the first degree). . . .

The Respondent's conviction accordingly provides a separate basis for his disqualification, and it is one that the Commissioner lacks discretion to set aside.²⁶ Moreover, revocation is appropriate if a license holder has a disqualification that is not set aside.²⁷ The County has demonstrated that reasonable cause exists to revoke Respondent's child foster care license on the basis of the maltreatment determination and the criminal conviction.

K.D.S.

²⁶ Minn. Stat. § 245C.24, subd. 2(a) (permanent disqualification for sexual abuse).

²⁷ Minn. Stat. § 245A.07, subd. 3(a).